

[51] AN ACT

To amend an act entitled "an act defining the jurisdiction, and regulating the practice of Probate Courts," passed March 14th, 1853.

Sec. 1. Be it enacted by the General Assembly of the State of Ohio, That sections forty-nine, fifty, and fifty-two, of an act defining the jurisdiction and regulating the practice of the probate courts, passed March 14, 1853, be, and the same are hereby so amended as to read as follows: Sec. 49. One hundred and eighty judicious persons, having the qualifications of electors, shall be annually selected in each county, to attend as jurors in the probate court, in the manner prescribed by law, for the selection of jurors to attend the court of common pleas; and such separate list shall be delivered to the probate judge by the trustee or judge of election, at the same time the list for the court of common pleas is required to be delivered to the clerk of that court; and the persons named in the list delivered to the probate judge, shall serve as jurors in the probate court, under the provisions of this act; Provided, that prior to the selection and return of such jurors for the year 1854, as provided by law, said probate court shall cause to be summoned for each term, the proper number of persons, having the required qualifications, to serve as jurors for such term.

Sec. 2. Sec. 50. The names of the persons selected to serve as jurors in the probate court, shall be written on separate pieces of paper, and deposited in a box, to be provided at the expense of the county; and at least ten days before a term of a probate court, unless by a written entry in his minutes, the judge shall dispense with or postpone the attendance of a jury, he shall, in the presence of the sheriff of the county, proceed to shake the box and draw therefrom twelve ballots, and shall forthwith deliver a list of the jurors drawn, to the sheriff, deputy sheriff, or a constable of the county, with an endorsement thereon, signed by him, with his name and seal of office, to the following effect: A. B., sheriff, (or deputy sheriff, or constable,) of the county of —, to which this is delivered, is required to summon the persons named in the within list, to appear before me at —, (naming the place,) on (naming the day and hour,) to serve as jurors at a probate court, to be then and there held, dated at —, the — day of —, 18—.

Sec. 3. Sec. 52. Each party shall be entitled to two peremptory challenges, and such other challenges for cause, as the probate judge may allow; and if twelve jurors do not attend, or be not obtained, the judge may direct the sheriff, or other officer in attendance, to summon any of the bystanders, or others who may be competent, against whom no sufficient cause of challenge shall appear, to act as jurors. When twelve jurors appear and are accepted, they shall constitute a jury. The failure to attend by any person, when duly summoned, shall be punished as in like cases in the court of common pleas; and the jury, when sworn or affirmed, shall hear the proofs of the parties, which must be delivered in public, and in the presence of the defendant.

Sec. 4. That the original sections, forty-nine, fifty, and fifty-two, of said act, be and the same are hereby repealed.

F. C. LEBLOND,

Speaker of the House of Representatives.

JAMES MYERS,

President of the Senate.

April 26, 1854.

[55] AN ACT

To provide against the evils resulting from the sale of Intoxicating Liquors in the State of Ohio.

Sec. 1. Be it enacted by the General Assembly of the State of Ohio, That it shall be unlawful for any person or persons, by agent or otherwise, to sell, in any quantity, intoxicating liquors, to be drank in, upon, or about the building, or premises where sold, or to sell such intoxicating liquors, to be drank in any adjoining room, building or premises, or other place of public resort connected with said building.

Sec. 2. That it shall be unlawful for any person or persons, by agent or otherwise, to sell intoxicating liquors to minors, unless upon the written order of their parents, guardians, or family physician.

Sec. 3. That it shall be unlawful for any person or persons, by agent or otherwise, to sell intoxicating liquors to persons intoxicated, or who are in the habit of getting intoxicated.

Sec. 4. That all places where intoxicating liquors are sold in violation of this act, shall be taken, held, and declared to be common nuisances, and all rooms, taverns, eating-houses, bazaars, restaurants, groceries, coffee-houses, cellars, or other places of public resort, where intoxicating liquors are sold in violation of this act, shall be shut up and abated as public nuisances, upon the conviction of the keeper thereof, who shall be punished as hereinafter provided.

Sec. 5. That it shall be unlawful for any person to get intoxicated, and every person found in a state of intoxication, shall, upon conviction thereof, be fined in the sum of five dollars, and imprisoned in the county jail not more than three, nor less than one day, and pay the costs of prosecution.

Sec. 6. That every person who shall, by the sale of intoxicating liquors, contrary to this act, cause the intoxication of any other person, such person or persons shall be liable for, and compelled to pay a reasonable compensation, to any person who may take charge of, and provide for such intoxicated person, and one dollar per day in addition thereto, for every day such intoxicated person shall be kept, in consequence of such intoxication, which sums may be recovered in a civil action, before any court having jurisdiction thereof.

Sec. 7. That every wife, child, parent, guardian, employer, or other person, who shall be injured in person or property, or means of support by any intoxicated person, or in consequence of the intoxication, habitual or otherwise, of any person, such wife, child, parent, guardian, employer, or other person, shall have a right of action in his or her own name, against any person who shall, by selling intoxicating liquors contrary to this act, have caused the intoxication of such person, for all damages actually sustained, as well as exemplary damages; and a married woman shall have the same right to bring suits, prosecute and control the same, and the amount recovered, the same as if a feme sole; and all damages recovered by a minor, under this act, shall be paid, either to such minor, or to his or her parent, guardian, or next friend, as the court shall direct, and all suits for damages under this act, shall be by a civil action, in any of the courts of this State, having jurisdiction thereof.

Sec. 8. That for every violation of the provisions of the first, second, and third sections of this act, every person so offending shall forfeit and pay a fine of not less than twenty, nor more than fifty dollars, and be imprisoned in the jail of the county for not less than ten, nor more than thirty days, and pay the costs of prosecution, and for every violation of the provisions of the fourth section of this act, every person convicted as the keeper of any of the places therein declared to be nuisances, shall forfeit and pay a fine of not less than fifty, nor more than one hundred dollars, and be imprisoned in the jail of the county for not less than twenty, nor more than fifty days, and pay the costs of prosecution, and such place or places so kept by such person or persons so convicted, shall be shut up and abated, upon the order of the court before whom such conviction may be had, until such time as such person or persons, keeping such place or places, shall give bond and security to the acceptance of said court, in the penal sum of one thousand dollars, payable to the State of Ohio, conditioned that he, she, or they, will not sell intoxicating liquors contrary to the laws of this State, and will pay all fines, costs, and damages, assessed against such keeper or keepers, for any violation thereof, and in case of a forfeiture of such bond, suit may be brought thereon, for the use of any person interested, or for the use of the county, in case of a fine, or costs due such county; provided that the provisions of the first and fourth sections of this act shall not extend to the sale of the wine manufactured of the pure juice of the grape cultivated in this State, or beer, ale, or cider.

Sec. 9. That the giving away of intoxicating liquors, or other shift or device to

evade the provisions of this act, shall be deemed and held to be an unlawful selling within the provisions of this act.

Sec. 10. That for all fines and costs assessed against any person or persons, for any violation of this act, the real estate, and personal property of such person or persons, of every kind, without exemption, shall be liable for the payment thereof; and all such fines and costs shall be a lien upon such real estate until paid. And in case any person or persons, shall rent or lease, any building or premises, and knowingly suffer the same to be used and occupied for the sale of intoxicating liquors, contrary to this act, such building and premises, so leased and occupied, shall be held liable for, and may be sold to pay all fines and costs assessed against the person occupying such building or premises, for any violation of this act; and in case such building or premises belong to any minor, insane person or idiot, the guardian or guardians, of such minor or minors, or insane person or idiot, who has control of such building or premises, shall be liable for, and account to such ward or wards, insane person or idiot, for all damages, in consequence of the use and occupation of such building and premises, and liabilities for such fines and costs, as aforesaid.

Sec. 11. That all prosecutions under this act shall be in the name of the State of Ohio, and shall be commenced upon a written complaint under oath or affirmation before any justice of the peace of the county in which said offence was committed, or Mayor of any incorporated town, village or city, or by information or indictment, as may be provided by law for the prosecution of offences, the punishment of which is not capital, or imprisonment in the penitentiary; and upon the filing of such complaint with such justice of the peace or mayor as aforesaid, such justice of the peace or mayor shall forthwith issue a warrant directed to the proper officer for the arrest of the person or persons charged with a violation of the provisions of this act, and such officer shall forthwith arrest the person or persons named in said warrant; and bring him or them before the justice of the peace or mayor issuing said warrant; and upon the return of said warrant served, such justice of the peace or mayor shall proceed to inquire into the truth of such complaint, unless for good cause shown a continuance is granted at the instance of either party, and in case the continuance of said action as aforesaid, the defendant or defendants shall enter into a recognizance to the State of Ohio in such sum as the justice of the peace or mayor may deem reasonable, with security to the acceptance of such justice or mayor, conditioned for the appearance of said defendant or defendants at the time fixed for the hearing of said complaint, and in default of such defendant or defendants giving such recognizance as aforesaid the defendant or defendants shall be committed to the jail of the county to be safely kept until the time fixed for the hearing of said complaint; and if the parties so recognized shall not appear at the time set for said trial the recognizance so given by him or them shall be forfeited by such justice of the peace or mayor, and such officer shall enter such forfeiture upon said recognizance, and also upon his docket, and thereupon such justice or mayor shall forthwith proceed to collect the penalty of said recognizance by instituting an action thereon and proceeding with the same to final judgment, and when the same is collected after paying the costs of such collection such justice or mayor shall pay over the balance to the township, city, or incorporated village treasurer for the support of common schools, and in all cases of prosecution before justices of the peace, or mayors, if such officer finds the complaint to be true, he shall recognize such defendant or defendants to answer such said charge as in other criminal prosecutions of like grades: Provided, that if such defendant or defendants shall plead guilty, such officer may affix the penalty and proceed to judgment; and in such case, said officer shall immediately issue an execution against the property and body of the defendant, for the fine and costs, unless paid or secured, and said defendant shall not be discharged until said judgment and costs shall be fully paid, or secured to be paid.

Sec. 12. The following form of com-

plaint shall be sufficient in criminal proceedings, before justices of the peace, or mayors, under this act, when applicable, but may be varied to suit the nature of the case, namely:

State of Ohio, — County, ss. Before me, A. B., (a justice of the peace for said county, or mayor of, &c., as the case may be,) personally came C. D., who being duly sworn according to law, deposeth and saith, that on, or about the — day of —, in the year —, at the county of —, aforesaid, E. F., did sell intoxicating liquors, to one G. H., to be drank in the place where sold, (or to G. H., a minor, &c., or a person intoxicated, or in the habit of getting intoxicated, as the case may be, or is the keeper of a room, or tavern, as the case may be, where intoxicating liquors are sold in violation of law,) and further saith not.

Signed,

C. D.

Sworn to and subscribed before me, this — day of —, A. D. —.

A. B., Justice, or Mayor, &c.

Sec. 13. In all prosecutions under this act, by indictment or otherwise, it shall not be necessary to state the kind of liquor sold, or to describe the place where sold, and for any violation of the fourth section, it shall not be necessary to state the name of any person to whom sold; and in all cases the person or persons, to whom intoxicating liquors shall be sold, in violation of this act, shall be competent, as witnesses, to prove such fact, or any other tending thereto.

Sec. 14. That "an act to restrain the sale of spiritous liquors," passed March 12, 1851, and "an act further defining the powers of trustees of townships," passed March 12, 1853, be, and the same are hereby repealed; Provided, that all suits and prosecutions pending under said acts, or previous violations thereof, shall be prosecuted under said acts, the same as before the passage of this act.

F. C. LEBLOND,

Speaker of the House of Representatives.

JAMES MYERS,

President of the Senate.

May 1st, 1854.

[57] AN ACT

To authorize County Surveyors to acknowledge deeds and other instruments, and to administer oaths.

Sec. 1. Be it enacted by the General Assembly of the State of Ohio, That the several county surveyors, now and hereafter in office in the several counties of the state of Ohio, shall each, in their respective counties, have the same power to take and certify the acknowledgment of deeds, mortgages, powers of attorney, and other instruments affecting real estate, that justices of the peace now or at any time hereafter may have in their proper counties.

Sec. 2. That the several county surveyors, now and hereafter in office in the state of Ohio, shall each, within their respective counties, have the same power to administer oaths and affirmations, and to take affidavits, and certify all of the same, that justices of the peace, now or hereafter, at any time, may have in their proper counties, except in the trial of causes before such justices.

F. C. LEBLOND,

Speaker of the House of Representatives.

JAMES MYERS,

President of the Senate.

April 29, 1854.

[61] AN ACT

To amend the twenty-ninth section of an act entitled "an act for the incorporation of Townships," passed March 14, 1853.

Sec. 1. Be it enacted by the General Assembly of the State of Ohio, That section twenty-nine of the act entitled "an act for the incorporation of townships," passed March 14th, 1853, be so amended as to read: That it shall be lawful for the trustees of any township, in any county in this state, to purchase, and protect or improve, a cemetery, or burying ground, not exceeding ten acres of land, for the use of such township; and for the purpose of paying for, and improving and protecting such grounds, they are hereby authorized to levy and assess upon the taxable property of such township, such a percentage as will raise any sum not exceeding one thousand dollars in any one year, until the whole amount of the purchase money,